



PATENT  
Customer No. 22,852  
Attorney Docket No. 5725.0848-00  
Application No.: 09/931,913

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	)	
	)	
Nghi Van Nguyen et al.	)	Group Art Unit: 1751
	)	
Application No.: 09/931,913	)	Examiner: E. Elhilo
	)	
Filed: August 20, 2001	)	
	)	
For: COMPOSITIONS COMPRISING	)	Confirmation No.: 4345
AT LEAST ONE HYDROXIDE	)	
COMPOUND AND AT LEAST ONE	)	
OXIDIZING AGENT, AND	)	
METHODS TO STRAIGHTEN	)	
CURLY HAIR	)	

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**APPEAL BRIEF UNDER BOARD RULE § 41.37**

In support of the Notice of Appeal filed July 24, 2006, and further to Board Rule 41.37, Appellants present this brief and enclose herewith a check for the fee of \$500.00 required under 37 C.F.R. § 1.17(c).

This Appeal Brief is being filed concurrently with a petition for an Extension of Time for two months, and the appropriate fee.

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This Appeal is in response to the final Office Action dated February 24, 2006. If any additional fees are required or if the enclosed payment is insufficient, Appellants request that the required fees be charged to Deposit Account No. 06-0916.

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**Real Party In Interest**

L'Oréal S.A. is the assignee of record, as indicated by the assignment in its name, recorded at Reel 012311, Frame 0799.

**Related Appeals and Interferences**

Appellants, Appellants' undersigned legal representative, or L'Oréal S.A. know of no other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**Status Of Claims**

Claims 1-92 are pending in this application. Claim 21 was canceled. Claims 46-92 were withdrawn. No claims have been allowed.

In the Office Action:

(1) Claims 1-20, 22-28, and 30-45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,872,111 to Au et al ("*Au*") and

(2) Claim 29 was rejected under 35 U.S.C. § 103(a) over *Au* in view of U.S. 2001/0008630 A1 to Pyles et. el. ("*Pyles*").

The rejection of claims 1-20 and 22-45 is being appealed. Further to 37 C.F.R. § 41.37(c)(1)(iii), the attached Appendix contains a clean copy of the claims.

**Status Of Amendments**

No amendments to the claims were filed subsequent to the rejection dated  
February 24, 2006.

**Summary Of Claimed Subject Matter**

The claims of the present invention generally relate to compositions for relaxing keratin fibers using a combination of at least one hydroxide compound and at least one oxidizing agent. Specification, page 1, para [001].

More specifically, one embodiment of the present invention, as recited in independent claim 1, is directed to a composition for lanthionizing keratinous fibers to achieve relaxation of the keratinous fibers comprising at least one hydroxide compound, at least one oxidizing agent; and at least one complexing agent effective for dissociating the at least one hydroxide compound. Specification, page 6, para. [016], page 10, para. [029]. Moreover, according to claim 1, the at least one hydroxide compound and the at least one oxidizing agent must be present in the composition in a sufficient quantity to effect lanthionization of keratinous fibers. *Id.*

Independent claim 43 is similar to claim 1 except the at least one hydroxide compound is present in an amount such that the amount of hydroxide ion ranges from 0.1% to 2% by weight relative to the total weight of the composition. Specification, page 6, para. [017], page 10, para. [029].

Independent claims 44 and 45 have the same hydroxide ion limitation with different weight ranges - 0.01% to 1% (specification, page 6, para. [017], page 10, para. [029]) and 0.01% to .5% (specification, page 6, para. [017], page 10, para. [029]), respectively.



**Grounds of Rejection**

Two grounds of rejection are to be reviewed in this appeal. The Examiner has maintained:

(1) the rejection of claims 1-20, 22-28, and 30-45 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,872,111 to Au et. al ("*Au*") and

(2) the rejection of claim 29 under 35 U.S.C. § 103(a) over *Au* in view of U.S. 2001/0008630 A1 to Pyles et. al ("*Pyles*").

### Argument

Each claim of this patent application is separately patentable, and upon issuance of a patent will be entitled to a separate presumption of validity under 35 U.S.C. § 282. The arguments set forth below are arranged under two subheadings, and in accordance with 37 C.F.R. § 41.37(c)(1)(vii) these subheadings indicate the claims that are argued separately. As set forth below, the claims are grouped as follows:

- A. Claims 1-20, 22-28, and 30-45 and
- B. Claim 29.

Several basic factual inquiries must be made in order to determine the obviousness or non-obviousness of claims of a patent application under 35 U.S.C. § 103. These factual inquiries, set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), require the Examiner to:

- (1) Determine the scope and content of the prior art;
- (2) Ascertain the differences between the prior art and the claims in issue;
- (3) Resolve the level of ordinary skill in the pertinent art; and
- (4) Evaluate evidence of secondary considerations.

The obviousness or non-obviousness of the claimed invention is then evaluated in view of the results of these inquiries. *Graham*, 383 U.S. at 17-18, 148 USPQ 467.

In order to carry the initial burden of establishing a prima facie case of obviousness that satisfies the *Graham* standard, the Examiner must demonstrate that three elements are met. First, the Examiner must show that the prior art reference teaches or suggests all the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Second, the Examiner must show that the prior art could have been combined with a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d

1091, 213 USPQ 375 (Fed. Cir. 1986). Finally, the Examiner must demonstrate that there is some suggestion or motivation, either in the reference or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. *In re Rouffet*, 149 F.3d 1350, 47 USPQ2d 1453 (Fed. Cir. 1998). “Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.” *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 1998) (citations omitted). In addition, the suggestion or motivation “must be found in the prior art reference, not in the Applicant’s disclosure.” *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991).

The Federal Circuit has set the bar high for establishing this third criterion. Indeed, the Federal Circuit has stated that the evidence of a motivation or suggestion to modify a reference must be “clear and particular.” *In re Dembicziak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). The Court has reaffirmed the Examiner’s high burden to establish a prima facie case of obviousness and has repeatedly emphasized the requirement of specificity. See *Kotzab*, 217 F.3d at 1370, 55 USPQ2d, at 1317; *In re Sang-Su Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002); *Winner Intern. Royalty Corp. v. Wang*, 202 F.3d 1340, 50 USPQ2d 1580 (Fed. Cir. 2000).

In the present case, a prima facie case of obviousness was not established at least because the Examiner failed to provide evidence showing a motivation or suggestion to modify *Au* or to combine *Au* and *Pyles* to arrive at the presently claimed invention. Moreover, the Examiner has not shown that the cited references teach or suggest each claim limitation.

**A. CLAIMS 1-20, 22-28, AND 30-45 ARE PATENTABLE OVER *Au***

As mentioned above, the prior art must provide some evidence of a motivating force that would compel one skilled in the art to do what the inventor has done. Merely taking cited art and piecing together unrelated disclosures cited therein does not amount to a motivation to make an invention. Here, however, the Examiner has done just that. By selecting disparate portions of *Au*, the Examiner has maintained that this reference could be modified to obtain the present invention. To sustain a proper rejection under 35 U.S.C. § 103, however, much more is required besides blindly identifying each claimed limitation in a document, ignoring the context in which the limitation is discussed. As explained below, the Examiner has applied this standard to the present claims and as a result has maintained an improper rejection.

**1. The Examiner has Misconstrued the *Au* Reference**

During the course of prosecution of the present application, the Examiner has repeatedly failed to understand and to rationally apply the *Au* reference to the presently pending claims. Specifically, the Examiner has mistakenly contended that *Au* teaches or suggests a composition comprising “at least one hydroxide compound and . . . at least one oxidizing agent . . . present in the composition in a sufficient quantity to effect lanthionization of keratinous fibers.” Claim 1. This misunderstanding is largely due to the expansiveness of the *Au* disclosure.

Generally, *Au* broadly relates to the many uses of glycosylamide surfactants. The first portion of the specification is dedicated to describing, at length, the various compositions that can be prepared in accordance with *Au*’s invention, such as bar soaps (col. 9, line 10), facial and cleansing compositions (col. 10, lines 12-14), bar and

body shampoo (col. 12, lines 11-13), conditioner compositions (col. 14, lines 45-47), cosmetic compositions (col. 14, lines 54-46), etc. The second part of the specification discloses, again at length, various methods of manufacturing glycosylamides (cols. 23-31). Finally, the third part of the specification provides even more examples of the types of compositions where *Au*'s glycosylamide surfactants can be used. In sum, *Au* provides a laundry list of compositions comprising glycosylamide surfactants and methods of making glycosylamide surfactants.

From this textbook-like disclosure, the Examiner formulates the rejection by piecing together disclosures discussing the ingredients used in making shampoos (i.e. sodium hydroxide at col. 14, lines 22-34) and detergents (i.e. oxidizing agents at col. 22, lines 30-31) with disclosures relating to ingredients used in cosmetics (i.e. clay materials at col. 15, lines 5-7) and general disclosures relating to glycosylamide surfactants (i.e. hair straightening/relaxing products, col. 31, lines 26-38). *Office Action* dated February 24, 2006, page 3. After identifying these various disclosures, the Examiner concludes "there is clear motivation to one having ordinary skill in the art to formulate a composition for lanthionizing keratin fibers that comprises the claimed ingredients as taught by *Au*." *Id.* This motivation is anything but "clear" as the Examiner has not identified a single reason as to why one skilled in the art would have made his suggested selections and modifications.

The only reason that the Examiner has continued to assert throughout prosecution is "[*Au*] teaches compositions comprising all the claimed ingredients, and, thus, a person of ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results." *Office Action* dated

October 27, 2003, page 4; *see also Office Action* dated February 24, 2006, page 3. The flaw in the Examiner's reasoning stems from the fact that he continues to ignore the context in which various ingredients are discussed in the reference. Instead, he simply uses the present invention as a roadmap to pick and choose random ingredients from *Au* in an attempt to support the rejection. This can be illustrated by the various arguments the Examiner has made to support his prima facie case by relying on different disclosures in *Au* throughout the prosecution of this case.

For example, in the October 27, 2003 Office Action, the Examiner contended that *Au* teaches that a bleaching agent, such as hydrogen peroxide, can be present in *Au*'s compositions in amounts ranging from .01% to 7%. *Office Action*, page 5. According to the Examiner, this amount "covers the amounts of 1%, 3% and 6% recited in Table 1, at page 20" of the present specification. *Id.* This was and still is an incorrect reading of the reference.

In response, Appellants argued that *Au* never mentions that any of the numerous disclosed compositions can contain a bleaching agent, such as hydrogen peroxide, to lanthionize keratinous fibers. *Amendment After Final* dated July 12, 2004, page 12. The only mention of hydrogen peroxide, which the Examiner relied on to support the rejection, is in the manufacturing portion of the reference. *Au* teaches that when the glycosylamides are manufactured "[b]leaching is sometimes required but not always necessary, since **the compounds of the invention** [i.e., glycosylamides] are generally of good color." *Au*, col. 29, ll. 58-62 (emphasis added). *Id.* *Au* then lists hydrogen peroxide, a known oxidizing agent, as a potential agent to use in this bleaching process. Thus, it is clear that *Au* uses an oxidizing agent to bleach glycosylamides, which are

“the compounds of the invention,” and does not use an hydrogen peroxide as a potential ingredient in any of its disclosed compositions.

In response to this argument, the Examiner later modified his position in an attempt to further justify the obviousness rejection. He contended that “the bleaching agent can be added to the composition after the reaction of manufacturing the glycosylamide, which implies that the bleaching agent is part of the composition and is not used or involved in the process of manufacturing of the surfactants.” Advisory Action, page 2, Office Action dated November 19, 2004, pages 5-6. This reasoning was also flawed.

Indeed, Appellants contended that it is illogical to conclude that the bleaching agent is not used or involved in the process of manufacturing glycosylamide surfactants. Submission Under 37 C.F.R. § 1.1114 dated July 22, 2005, page 7. The bleaching process is described in the section entitled “Method of Manufacture of Glycosylamides.” Col. 22, line 62. Thus, to conclude bleaching agents are not involved in the manufacture of glycosylamides contradicts the explicit teaching of the reference.

Moreover, Appellants contended that the Examiner improperly quoted the *Au* reference in an attempt to find factual support for the rejection. Submission Under 37 C.F.R. § 1.1114 dated July 22, 2005, page 7. The Examiner stated that *Au* teaches that “the bleaching agent is added to the composition after the reaction of manufacturing of the glycosylamide . . . .” *Office Action*, page 5. Nowhere does the *Au* reference state that; rather, as mentioned above, it explicitly states that bleaching can occur “after the reaction is complete. To include the term “manufacturing” was improper, unsupported by the reference, and was in direct conflict with the teachings of the reference.

In response to those arguments, the Examiner now further modifies his position by relying on *Au*'s teaching of "oxygen or chlorine-liberating bleaches" as support for the oxidizing agent recited in the present claims. *Office Action* dated February 24, 2006, page 3. Again, this reliance is misplaced because the Examiner has provided no justification for this particular selection. The disclosure of oxygen or chlorine-liberated bleaches is buried in a laundry list of ingredients that can be used in a detergent composition. *Au* does not disclose that "oxygen or chlorine liberating bleaches" can be used in a composition for lanthionizing keratinous fibers, as presently claimed. Nor does the Examiner provide any reason as to why one skilled in the art would have selected these bleaches to use in a composition for lanthionizing keratinous fibers.

Moreover, *Au* discloses that the "oxygen or chlorine liberating bleaches should only be present in its detergent composition in "minor amounts." Col. 22, lines 22-23. A minor amount would hardly be sufficient to effectively lantionize the keratinous fibers, as presently claimed. And again, the Examiner has provided no reason as to why one skilled in the art would have modified the *Au* reference to use more than a "minor amount." This new argument is yet a further example of the Examiner selecting disclosures from the *Au* reference that have nothing to do with the claimed invention.

In sum, *Au* provides no support for the modifications that the Examiner contends would have been obvious. To conclude the one skilled in the art would have selected ingredients from a shampoos, cosmetics, and detergents, and somehow create a composition for lanthionizing keratinous fibers to achieve relaxation simply makes no sense. Moreover, the Examiner has made to specific findings as to why one skilled in



the art would have made these selections in the first place. Accordingly, Appellants respectfully request that this rejection be reversed and withdrawn.

## **2. Au Does Not Teach Every Claim Limitation**

A proper reading of the *Au* reference illustrates that this reference fails to defeat patentability of the pending claims because it does not teach or suggest a composition for lathionizing keratinous fibers. As discussed in detail above, *Au* is primarily directed towards the manufacture of glycosylamide surfactants and compositions comprising glycosylamide surfactants. While *Au* does briefly mention the possibility of hair straightening/relaxing compositions in a laundry list of possible hair care compositions, it does not provide sufficient direction or guidance to make the claimed invention. See *Au*, col. 31, ll. 30-39. In fact, *Au* is completely silent on a composition for lanthionizing keratinous fibers comprising any of the claimed compounds. Accordingly, for at least this reason *Au* cannot render the present claims obvious.

The Examiner has argued that a “composition for lathionizing keratinous fibers” is not given patentable weight because it is apart of the preamble. *Office Action* dated February 24, 2006, page 2. Citing a string of case law, the Examiner contends that here the preamble “merely recites the purpose of the process or the intended use of a structure” and “the body of the claim does not depend on the preamble for completenss [sic].” *Id.* Appellants disagree with the Examiner’s application of these holdings to the present facts.

Specifically, it is unclear why the Examiner is focusing on the preamble when the body of the claim explicitly requires that the “at least one hydroxide compound and said at least one oxidizing agent are present in the composition, in a sufficient quantity to

effect lathionization of keratinous fibers.” Claim 1(emphasis added). Thus, the claim body incorporates the preamble by specifying that the claimed ingredients lathionize the keratinous fibers. Accordingly, the Examiner cannot ignore this claim limitation by relying on the holdings of inapplicable case law.

Moreover, *Au* nowhere teaches or suggests a composition for lanthionizing keratinous fibers wherein the at least one hydroxide compound and the at least one oxidizing agent are present in the composition in a sufficient quantity to effect lanthionization of keratinous fibers, as presently claimed. The Examiner improperly finds this limitation by misreading the *Au* reference as discussed at length above. Because the oxidizing agents and hydroxide agents disclosed in *Au* are never incorporated into a lanthionizing composition, nor does it suggest the use of these agents in a lanthionizing composition, it does not teach or suggest each claim limitation. For at least this reason, the rejection should be reversed and withdrawn.

**B. CLAIM 29 IS PATENTABLE OVER *AU* IN VIEW OF *PYLES***

The Examiner has also maintained the rejection of claim 29 under 35 U.S.C. § 103(a) in over *Au* in view of U.S. 2001/0008630 A1 to Pyles et. el. (“*Pyles*”) for the reasons disclosed on page 6 of the Office Action dated November 19, 2004. Appellants respectfully traverse this rejection.

The Examiner contends that *Au* suggests the use of amino acids as a genus and *Pyles* teaches a species of amino acid; thus, there is a motivation to one skilled in the art to incorporate any amino acid including the glutamate compound in *Au*’s composition. *Office Action*, page 6. As a fundamental matter, the disclosure of a genus does not alone provide the motivation to incorporate any species within that genus;

thus, for at least this reason the rejection is improper. *In re Duel*, 51 F.3d 1552, 1559, 34 USPQ2d 1210, 1215 (Fed. Cir. 1995). Additionally, Appellants again find fault with the Examiner's assessment of the *Au* reference.

Specifically, Appellants submit that *Au* does not suggest the use of amino acids as a genus. To support his position, the Examiner cites to the following portion of *Au*:

Some other preferred moisturizers are the nonocclusive liquid water soluble polyols and the essential amino acids compounds found natural in the skin.

Col. 22, lines 63-64. From this passage, the Examiner concludes that *Au* teaches amino acids as a genus. The Examiner is incorrect - by omitting the term "essential," the Examiner tries to make it appear as though this reference teaches amino acids as a class. But *Au* teaches only essential amino acids, i.e. amino acids that cannot be synthesized by the body. Thus, because *Au* only teaches essential amino acids, as clearly disclosed in the reference, no motivation would have existed to incorporate a non-essential amino acid. Accordingly, for at least this reason, the rejection is improper and should be reversed and withdrawn.

**Conclusion**

For the reasons given above, pending claims 1-20 and 22-45 are allowable and reversal of the Examiner's rejection is respectfully requested.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: November 8, 2006

By: Mareesa A. Frederick  
Mareesa A. Frederick  
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**Claims Appendix to Appeal Brief Under Rule 41.37(c)(1)(viii)**

1. (Previously presented) A composition for lanthionizing keratinous fibers to achieve relaxation of said keratinous fibers comprising:

- (i) at least one hydroxide compound;
- (ii) at least one oxidizing agent; and
- (iii) at least one complexing agent effective for dissociating the at least one hydroxide compound,

wherein said at least one hydroxide compound and said at least one oxidizing agent are present in the composition in a sufficient quantity to effect lanthionization of keratinous fibers.

2. (Original) A composition according to claim 1, wherein said at least one hydroxide compound is chosen from alkali metal hydroxides, alkaline earth metal hydroxides, transition metal hydroxides, lanthanide metal hydroxides, actinide metal hydroxides, Group III hydroxides, Group IV hydroxides, Group V hydroxides, Group VI hydroxides, organic hydroxides, and compounds comprising at least one hydroxide substituent which is at least partially hydrolyzable.

3. (Original) A composition according to claim 2, wherein said at least one hydroxide compound is chosen from sodium hydroxide, lithium hydroxide, and potassium hydroxide.

4. (Original) A composition according to claim 3, wherein said at least one hydroxide compound is sodium hydroxide.

5. (Original) A composition according to claim 1, wherein said at least one hydroxide compound is present in an amount such that the amount of hydroxide ion ranges from 0.01% to 2.5% by weight relative to the total weight of said composition.

6. (Original) A composition according to claim 5, wherein said at least one hydroxide compound is present in an amount such that the amount of hydroxide ion ranges from 0.01% to 2% by weight relative to the total weight of said composition.

7. (Original) A composition according to claim 6, wherein said at least one hydroxide compound is present in an amount such that the amount of hydroxide ion ranges from 0.01% to 1% by weight relative to the total weight of said composition.

8. (Original) A composition according to claim 1, wherein said at least one hydroxide compound is present in an amount such that the amount of hydroxide ion ranges from 0.01% to 0.5% by weight relative to the total weight of said composition.

9. (Original) A composition according to claim 1, wherein said at least one oxidizing agent is chosen from hydrogen peroxide, urea peroxide, alkali metal bromates and persalts.

10. (Original) A composition according to claim 9, wherein said at least one oxidizing agent is chosen from hydrogen peroxide.

11. (Original) A composition according to claim 1, wherein said at least one oxidizing agent is present in an amount ranging from 1% to 12% by weight relative to the total weight of the composition.

12. (Original) A composition according to claim 11, wherein said at least one oxidizing agent is present in an amount ranging from 3% to 6% by weight relative to the total weight of the composition.

13. (Original) A composition according to claim 1, further comprising at least one cation exchange composition.

14. (Original) A composition according to claim 13, wherein said at least one cation exchange composition is chosen from clays.

15. (Original) A composition according to claim 13, wherein said at least one cation exchange composition is chosen from silicates.

16. (Original) A composition according to claim 15, wherein said silicates are chosen from analcime, chabazite, gmelinite, harmotome, levynite, mordenite, epistilbite, heulandite, natrolite, stilbite, edingtonite, mesolite, scolecite, thomosonite, brewsterite, faujasite, gismondine, laumontite, phillipsite, and aluminosilicate.

17. (Original) A composition according to claim 15, wherein said silicates are chosen from zeolites.

18. (Original) A composition according to claim 15, wherein said silicates are chosen from zeolite clays.

19. (Original) A composition according to claim 1, further comprising at least one solvent.

20. (Original) A composition according to claim 19, wherein said at least one solvent is chosen from DMSO and water.

21. (Cancelled).

22. (Previously presented) A composition according to claim 1, wherein said at least one complexing agent is chosen from chelating agents, sequestering agents and salts of any of the foregoing.

23. (Previously presented) A composition according to claim 1, wherein said dissociation is chosen from partial dissociation and full dissociation.

24. (Previously presented) A composition according to claim 1, wherein at least one entity chosen from said least one hydroxide compound and said at least one complexing agent is formulated with at least one oxidizing agent.

25. (Original) A composition according to claim 22, wherein said chelating agents are chosen from ethylene-diaminetetraacetic acid (EDTA), nitrilotriacetic acid and ethyleneglycol-bis(-amino-ethyl ether)-N,N-tetraacetic acid.

26. (Original) A composition according to claim 22, wherein said sequestering agents are chosen from hydroxy carboxylic acids.

27. (Original) A composition according to claim 26, wherein said hydroxy carboxylic acids are chosen from gluconic acid, citric acid and tartaric acid.

28. (Original) A composition according to claim 22, wherein said at least one complexing agent is chosen from amino acids and crown ethers.

29. (Original) A composition according to claim 28, wherein said amino acids are monosodium glutamate.

30. (Original) A composition according to claim 22, wherein said at least one complexing agent is chosen from phosphates demonstrating chelating properties, phosphates demonstrating sequestering properties, phosphonates demonstrating chelating properties, phosphonates demonstrating sequestering properties, silicates demonstrating chelating properties and silicates demonstrating sequestering properties.

31. (Original) A composition according to claim 30, wherein said at least one complexing agent is chosen from tripotassium phosphate and trisodium phosphate.



32. (Original) A composition according to claim 30, wherein said at least one complexing agent is chosen from disodium silicate and dipotassium silicate.

33. (Previously presented) A composition according to claim 1, wherein said at least one complexing agent is chosen from organic acids and salts thereof.

34. (Previously presented) A composition according to claim 1, wherein said at least one complexing agent is chosen from mono-hydroxycarboxylic acids, dihydroxycarboxylic acids, polyhydroxycarboxylic acids, mono-aminocarboxylic acids, di-aminocarboxylic acids, poly-aminocarboxylic acids, mono-hydroxysulfonic acids, di-hydroxysulfonic acids, polyhydroxysulfonic acids, mono-hydroxyphosphonic acids, dihydroxyphosphonic acids, polyhydroxyphosphonic acids, mono-aminophosphonic acids, diaminophosphonic acids and polyaminophosphonic acids.

35. (Previously presented) A composition according to claim 1, wherein said at least one complexing agent is chosen from ethylene diamine tetraacetic acid (EDTA), N-(hydroxyethyl) ethylene diamine triacetic acid, aminotrimethylene phosphonic acid, diethylenetriamine-pentaacetatic acid, lauroyl ethylene diamine triacetic acid, nitrilotriacetic acid, iminodisuccinic acid, tartaric acid, citric acid, N-2-hydroxyethyliminodiacetic acid and salts of any of the foregoing.

36. (Original) A composition according to claim 35, wherein said at least one complexing agent is chosen from sodium EDTA, lithium EDTA, potassium EDTA and guanidine EDTA.

37. (Previously presented) A composition according to claim 1, wherein said at least one complexing agent and said at least one hydroxide compound form at least one complexing agent-counter ion complex.

38. (Original) A composition according to claim 37, wherein said composition comprises at least two complexing agents.

39. (Original) A composition according to claim 1, further comprising at least one additive chosen from dyes, anionic surfactants, cationic surfactants, nonionic surfactants, amphoteric surfactants, fragrances, silicones, silicone derivatives, screening agents, preserving agents, proteins, vitamins, polymers, plant oils, mineral oils and synthetic oils.

40. (Original) A composition according to claim 1, wherein said composition is in the form of an oil-in-water emulsion, a water-in-oil emulsion, a dispersion, a suspension, a cream, a foam, a gel, a spray, a powder or a liquid.

41. (Original) A composition according to claim 1, wherein said keratinous fibers are chosen from hair.

42. (Original) A composition according to claim 1, wherein said composition is heat-activated.

43. (Previously presented) A composition for lantionizing keratinous fibers to achieve relaxation of said keratinous fibers comprising:

- (i) at least one hydroxide compound;
- (ii) at least one oxidizing agent; and
- (iii) at least one complexing agent effective for dissociating the at least one hydroxide compound,

wherein said at least one hydroxide compound and said at least one oxidizing agent are present in the composition in a sufficient quantity to effect lantionization of keratinous fibers,

and further wherein said at least one hydroxide compound is present in an amount such that the amount of hydroxide ion ranges from 0.01% to 2% by weight relative to the total weight of the composition.

44. (Previously presented) A composition for lanthionizing keratinous fibers to achieve relaxation of said keratinous fibers comprising:

- (i) at least one hydroxide compound; and
- (ii) at least one oxidizing agent; and
- (iii) at least one complexing agent effective for dissociating the at least one hydroxide compound,

wherein said at least one hydroxide compound and said at least one oxidizing agent are present in the composition in a sufficient quantity to effect lanthionization of keratinous fibers,

and further wherein said at least one hydroxide compound is present in an amount such that the amount of hydroxide ion ranges from 0.01% to 1% by weight relative to the total weight of said composition.

45. (Previously presented) A composition for lanthionizing keratinous fibers to achieve relaxation of said keratinous fibers comprising:

- (i) at least one hydroxide compound; and
- (ii) at least one oxidizing agent; and
- (iii) at least one complexing agent effective for dissociating the at least one hydroxide compound,

wherein said at least one hydroxide compound and said at least one oxidizing agent are present in the composition in a sufficient quantity to effect lanthionization of keratinous fibers

and further wherein said at least one hydroxide compound is present in an amount such that the amount of hydroxide ion ranges from 0.01% to 0.5% by weight relative to the total weight of said composition.

Claims 46-92. (Withdrawn)

**Evidence Appendix to Appeal Brief Under Rule 41.37(c)(1)(ix)**

None.

**Related Proceedings Appendix to Appeal Brief Under Rule 41.37(c)(1)(x)**

None.